

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
THE HANOVER GROUP L. L. C.
VWP PERMIT NO. 01-2172**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and The Hanover Group L.L.C. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.

6. “The Hanover Group” or the “permittee” means The Hanover Group LLC certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Project” means the proposed construction of a 305 acre residential subdivision known as Bluffs at Bell Creek, and the commercial/retail/light industrial business park known as Bell Creek Park located in Hanover County, Virginia, which is bordered on the south by Pole Green Road, State Route 627, on the north by Totopotomoy Creek and bisected in an east/west direction by Verdi Lane, State Route 710.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. 01-2172.

SECTION C: Findings of Fact and Conclusions of Law

1. The Hanover Group is constructing a 305-acre residential subdivision known as the Bluffs at Bell Creek, and a commercial/retail/light industrial business park known as Bell Creek Park, in Hanover County. To address mitigation for the permanent impacts to wetlands that will result from the construction of road crossings, sewer line requirements and a pedestrian bridge, a Permit was issued to The Hanover Group on May 9, 2002, which will expire on May 9, 2008.
2. The Permit allows impacts to 0.65 acres of nontidal palustrine forested wetlands, 0.12 acres of scrub/shrub wetlands and 0.03 acres of state waters. The development of the sewer line will result in the permanent conversion of 1.29 acres of forested wetlands and 0.80 acres of scrub/shrub wetlands to emergent wetlands. Compensations mitigation is as follows: The on-site preservation of 7.151 acres of unimpacted forested wetlands and 15.8 acres of upland buffer, and a \$114,816.00 contribution to the Virginia Wetland Restoration Trust Fund.
3. On May 30, 2002, DEQ staff received a phone call from the permittee’s consultant stating that due to an engineering error, construction plans for a road slope were changed from a ratio of 2:1 to a 3:1. As a result of this error, the wetland impacts during construction of the road through the wetlands, exceed the limits allowed in the Permit by 0.16 acres. The unauthorized impacts to the wetlands included grubbing, grading, and filling. The consultant notified DEQ staff that a calculations error had been discovered, unauthorized impacts had occurred, and that the permittee was in the process of correcting the mistake and planting a wetland seed mix.
4. On May 31, 2002, DEQ staff inspected the site and observed equipment pulling fill material out of the wetlands. During that site visit, DEQ staff spoke to the project foreman who informed staff that construction of the road through the

wetlands began on May 20, 2002. He also stated that the consultants contacted him on May 23, 2002, regarding the error in the construction of the road slope.

5. On the May 31, 2002, site visit, DEQ staff observed that the permittee failed to flag the non-impacted wetlands within 50 feet of any clearing, grading or filling activities during active construction activities. Part I.B.15 of the Permit requires these areas be clearly flagged or demarcated for the life of the construction activity in that area.
6. The Permit, Part I.D.3, requires that the permittee notify DEQ in writing by certified mail at least 10 days prior to the initiation of authorized activities. A file review revealed that DEQ received the 10-day notification letter on May 15, 2002. Construction began on May 20, 2002. The Permit, Part I.D.3, requires that the permittee notify DEQ in writing by certified mail at least 10 days prior to the initiation of authorized activities.
7. A file review also revealed that the permittee had failed to submit the following, information/documentation as required by the Permit *prior* to commencement of authorized activities: final plans and specifications for each component construction (Part I.D.9); documentation that the Virginia Wetland Restoration Trust Fund had received the in-lieu fund contribution (Part I.H.2); and proof of recordation of preservation of the 7.151 acres of on-site forested wetlands and 15.8 acres of upland buffer (Part I.H.3). The final plans and specifications that were due before May 20, 2002, were received on June 25, 2002. The documentation verifying the trust fund had received the in-lieu fund contribution that was due before May 20, 2002, was received on June 25, 2002. The proof of recordation for the preservation that was due before May 20, 2002, was received on August 8, 2002, but was incomplete and did not comply with permit requirements. Part I.H.2.a and I.H.3.a also requires that the permittee *cease all work* if the documentation verifying receipt of the Trust Fund contribution and proof of recordation has not been submitted to DEQ *prior* to commencement of activities and in accordance with the Permit.
8. DEQ issued a Notice of Violation (NOV) to The Hanover Group on July 24, 2002, citing the Permit violations, as listed above.
9. On August 8, 2002, a meeting was held with the consultants of The Hanover Group, Resource International Ltd., to discuss resolution of the violations listed in the NOV.
10. On April 11, 2003, a meeting was held with Mr. Shield and Resource International Ltd., to discuss the Consent Special Order that was mailed to Mr. Shield on March 17, 2003.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders The Hanover Group, and The Hanover Group voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders The Hanover Group, and The Hanover Group voluntarily agrees to pay a civil charge of **\$12,925.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note the Federal Identification Number for The Hanover Group. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of The Hanover Group, for good cause shown by The Hanover Group, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, The Hanover Group admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Hanover Group consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Hanover Group declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by The Hanover Group to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Hanover Group shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Hanover Group shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Hanover Group shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and The Hanover Group. Notwithstanding the foregoing, The Hanover Group agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to The Hanover Group. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve The Hanover Group from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, The Hanover Group voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

The Hanover Group voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2003, by _____, who is
(name)
_____ of The Hanover Group, on behalf of The Hanover Group.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

The Hanover Group shall:

1. Preserve the 7.151 acres of on-site forested wetlands and the 15.8 acres of upland buffer as required by the Permit.
2. By June 30, 2003, submit a master plan depicting the area of each “phase” of construction for the Bluffs at Bell Creek and Bell Creek Park; clearly showing the acreage for the on-site forested wetland and upland preservation located in each “phase” of construction.
3. Submit 30 days prior to construction activities in each “phase”, the proof of recordation of the written protection, clearly showing the acreage and location of preservation. Construction activity shall not commence until DEQ has received the restrictive covenant for the area or “phase” proposed for construction. The protective covenant submitted for each “phase”, shall contain the specific language in accordance with Part I.H.3 of the Permit.
4. Submit by June 30, 2003, the proof of recordation of the written protection clearly showing the acreage of preservation for the “phases” currently under construction. The protective covenant shall contain the specific language in accordance with Part I.H.3 of the Permit.
5. In the quarterly reports, provide an enlargement key identifying the location of the current construction “phase” with figures showing detailed areas of construction as required by Part I.D.10 of the Permit.